

Family Care Rules

Effective Date January 6, 2003

WAC 296-130-010 Purpose.

It is in the public interest for employers to accommodate employees by providing reasonable leaves from work for family reasons. This chapter serves to establish a minimum standard allowing an employee to use the employee's sick leave or other paid time off to care for a sick family member.

WAC 296-130-020 Definitions.

- (1) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees. Employer also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.
- (2) "Employee" means a worker who is employed in the business of an employer. "Employee," for the purposes of this chapter, also includes workers performing in an executive, administrative, professional, or outside sales capacity.
- (3) "Employ" means to engage, suffer, or permit to work.
- (4) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is:
 - (a) Under eighteen years of age; or
 - (b) Eighteen years of age or older and incapable of self-care because of a mental or physical disability.
- (5) "Grandparent" means a parent of a parent of an employee.
- (6) "Parent" means a biological parent of an employee or an individual who stood *in loco parentis* to an employee when the employee was a child.
- (7) "Parent-in-law" means a parent of the spouse of an employee.
- (8) "Sick leave or other paid time off" means time allowed under the terms of an appropriate collective bargaining agreement or employer policy, as applicable, to an employee for illness, vacation, and personal holiday. It does not include any benefit which includes leave granted by short-term or long-term disability plans or policies.
- (9) "Spouse" means a husband or wife, as the case may be.
- (10) "Health condition that requires treatment or supervision" includes:
 - (a) Any medical condition requiring treatment or medication that the child cannot self-administer;
 - (b) Any medical or mental health condition which would endanger the child's safety or recovery without the presence of a parent or guardian; or
 - (c) Any condition warranting treatment or preventive health care such as physical, dental, optical or immunization services, when a parent must be present to authorize and when sick leave may otherwise be used for the employee's preventive health care.
- (11) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment or recovery in connection with such inpatient care; or that involves continuing treatment by or under the supervision of a health care provider or a provider of health care services and which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities).

(12) "Emergency condition" means a health condition that is a sudden, generally unexpected occurrence or set of circumstances related to one's health demanding immediate action, and is typically very short term in nature.

(13) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(14) "Physical or mental disability" means a physical or mental impairment that limits one or more activities of daily living or instrumental activities of daily living.

(15) "Infraction" means an alleged violation of RCW 49.12.270 through 49.12.295 as cited by the department.

(16) "Administrative law judge" means any person appointed by the chief administrative law judge, as defined in RCW 34.12.020(2) to preside at contested cases convened under RCW 49.12.270 through 49.12.295.

(17) "Department" means the department of labor and industries.

WAC 296-130-030 Employee rights.

(1) If, under the terms of a collective bargaining agreement or employer policy applicable to an employee, the employee is entitled to sick leave or other paid time off, then an employer must allow an employee to use any or all of the employee's choice of sick leave or other paid time off to care for:

- (a) A child of the employee with a health condition as defined in WAC 296-130-020(10); or
- (b) A spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency condition, also defined in WAC 296-130-020 (11) and (12).

(2) An employee may not take leave until it has been earned. The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave. Use of leave other than sick leave or other paid time off to care for a child, spouse, parent, parent-in-law, or grandparent under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement or employer policy, as applicable.

Note: Many employers combine paid leave categories such as sick leave and vacation leave, often described as "paid time off" or PTO. Such PTO allows employees the choice as to their use of this leave, thereby maintaining the intent of this chapter. In addition, employers may require employees to use PTO (provided it may be used for any purpose) as a prerequisite to using leave designated for a specific purpose, such as an extended illness leave, without violating this chapter, provided other leave is available for employees to use to care for sick family members on the same terms that it is available for an employee's health condition.

WAC 296-130-035 Prohibited action.

An employer must not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee:

(1) Has exercised, or attempted to exercise, any right provided under RCW 49.12.270 through 49.12.295; or

(2) Has filed a complaint, testified, or assisted in any proceeding under RCW 49.12.270 through 49.12.295.

WAC 296-130-040 Employee complaints.

(1) An employee who believes that his or her employer has not complied with RCW 49.12.270 through 49.12.295, or this chapter, may file a complaint with the department within six months of the alleged violation. The complaint should contain the following:

- (a) The name and address of the employee making the complaint;
- (b) The name, address, and telephone number of the employer against whom the complaint is made; and
- (c) A statement of the specific fact which constitutes the alleged violation, including the date(s) on which the alleged violation occurred.

(2) Upon receipt of a complaint, the department will forward written notice of the complaint to the employer, along with a warning of prohibited actions as stated in WAC 296-130-035.

(3) The department may investigate any complaint it deems appropriate. If the department determines that a violation of this chapter has occurred, it may issue a notice of infraction pursuant to WAC 296-130-060.

WAC 296-130-050 Posting.

(1) The department will furnish each employer a poster describing an employee's rights and an employer's obligations provided in this chapter.

(2) The employer must keep posted a current edition department poster stipulating the provisions of this chapter. The employer must display this poster in a conspicuous place.

(3) The employer must post its leave policies, if any, in a conspicuous place accessible to the employees at the employer's place of business.

(4) The posting requirement for employees whose leave policies are specified by individual contracts may be satisfied by stating that leave for such employees will be governed by the terms of such contracts.

(5) Employers with informal leave policies which are established on a case-by-case basis may satisfy the posting requirement by posting a statement explaining that policy.

WAC 296-130-060 Notices of infraction.

The department may issue a notice of infraction to an employer who violates RCW 49.12.270 through 49.12.295. The employment standards supervisor will direct that notices of infraction contain the following when issued:

(1) A statement that the notice represents a determination that the infraction has been committed by the employer named in the notice and that the determination will be final unless contested;

(2) A statement that the infraction is a noncriminal offense for which imprisonment will not be imposed as a sanction;

(3) A statement of the specific violation which necessitated issuance of the infraction;

(4) A statement of the penalty involved if the infraction is established;

(5) A statement informing the employer of the right to a hearing conducted pursuant to chapter 34.05 RCW if requested within twenty days of issuance of the infraction;

(6) A statement that at any hearing to contest the notice of infraction the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed, and that the employer may subpoena witnesses including the agent that issued the notice of infraction;

(7) If a notice of infraction is personally served upon a supervisory or managerial employee of a firm or corporation, the department will within ten days of service send a copy of the notice by

certified mail to the employer; and

(8) Constructive service may be made by certified mail directed to the employer named in the notice of infraction.

WAC 296-130-065 Service on employers.

(1) If an employer is a corporation or a partnership, the department is not required to serve the employer personally. In such a case, if no officer or partner of a violating employer is present, the department may issue a notice of infraction to any supervisor or managerial employee.

(2) If the department serves a notice of infraction on a supervisory or managerial employee, and not on an officer, or partner of the employer, the department will mail by certified mail a copy of the notice of infraction to the employer or registered agent of the company. The department will mail a second copy by ordinary mail.

WAC 296-130-070 Appeal of infraction notice.

(1) If an employer desires to contest the notice of infraction issued, the employer will file two copies of a notice of appeal with the department at the office designated on the notice of infraction, within twenty days of issuance of the infraction.

(2) The department must:

(a) Conduct a hearing in accordance with chapter 34.05 RCW and chapter 10-08 WAC; and

(b) Notify the employee who filed the initial complaint that resulted in the notice of infraction.

(3) Employers may appear before the administrative law judge through counsel, or may represent themselves. The department must be represented by the office of the attorney general.

(4) All relevant evidence shall be admissible in a hearing convened pursuant to RCW 49.12.270 through 49.12.295. Admission of evidence is subject to the Administrative Procedure Act, chapter 34.05 RCW.

(5) The administrative law judge will issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate, any legal penalty. The proposed decision will be served by certified mail or personally on the employer and the department. The employer or department may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and four copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal. The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director or his/her designee will review the proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director or his/her designee will serve the final decision on all parties. Any aggrieved

party may appeal the final decision to superior court pursuant to the Administrative Procedure Act, chapter 34.05 RCW unless the final decision affirms an unappealed proposed decision. If no party appeals within twenty days, the director's decision is conclusive and binding on all parties.

WAC 296-130-080 Penalty assessment.

An employer found to have committed an infraction under RCW 49.12.270 through 49.12.295 may be assessed the maximum penalty of a fine of two hundred dollars for the first noncompliance violation. An employer that continues to violate the terms of the statute may be subject to a fine not to exceed one thousand dollars for each violation.

WAC 296-130-100 Collective bargaining not impaired.

Nothing in this chapter will be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish leave benefits in excess of the applicable provisions of this chapter.